I am now prepared to hear submissions as regards sentence. [*After hearing submissions on sentence*]

I was satisfied that there were no extenuating circumstances of any kind to justify my showing mercy: see *Chang Liang Sang & Ors.* v. *Public Prosecutor*[7].

As I said in *Public Prosecutor* v. *Tan Gong Wai & Anor.*[8]:

"The quantity of drugs may not be large but was certainly not small. In any event, in my opinion, the quantity of drugs can only be an element in assessing sentence but, by no means, a decisive consideration. Again, the use of agents provocateurs in cases such as this is not only not unlawful but specifically authorised under the Act. This is understandable in view of the notorious difficulty of getting evidence in such cases. ..."

I would also repeat what I said in *Public Prosecutor* v. *Lim Teik Seng & Ors.*[9], namely,

"It would be superfluous to emphasize that the drug problem in this country has now reached epidemic proportions and one of the only ways of checking it is to make it plain to all those concerned in the drug world that if and when a conviction is secured for an offence of trafficking in hard drugs, the Law will, in the absence of extenuating circumstances, be enforced with the utmost rigour. These remarks are now academic since in all trials for drug trafficking in the High Court in respect of offences committed on or after the coming into force of the recent amendments, once a conviction is secured, the Judge has no option but to pass the sentence of death."

It was for the above reasons that I sentence the accused to death.

Sentenced accordingly.

Solicitors: *R. Rajasingam & Co.*

FLORENCE BAILES v. DR. NG JIT LEONG

[O.C.J. (Ajaib Singh J.) July 20, 1984]

[Penang – Civil Suit No. 209 of 1981]

Societies – Unincorporated Club – Alleged derogatory remarks by plaintiff against another lady associate – Complaint – Suspension of plaintiff by Club committee – Whether principles of natural justice applicable – Jurisdiction – Bias – Insufficient particulars in agenda – Declaration – Injunction & damages.

The plaintiff was a lady associate of the Penang Club by virtue of being the wife of an ordinary member and she had to pay a monthly subscription of $2 under the Club rules. The incident that sparked off this action took place in 1981 in the games room of the Club, where the plaintiff, as alleged by Madam Teoh, another lady associate, had made derogatory remarks about Madam Teoh in the presence and hearing of several persons. Madam Teoh reported this incident to the Club president and also sent him a letter written by a member of the Club committee, one Mr. Stone with whom she was then living. One Mr. Ong, a committee member and disciplinary convenor of the Club, investigated the complaint. He formed and took statements from the people excluding the plaintiff, who were in the games room when the alleged remarks were made. Ong took the stand that the committee was entitled to take action against the plaintiff without hearing her in defence. Finally in a committee meeting, it was decided that she should be suspended for three months.

The plaintiff then sued the defendant on his own behalf and on behalf of all the other members of the Club committee for a declaration that her suspension was null and void and for an injunction, damages and costs. The main issue concerns the question whether the principles of natural justice should be observed in the circumstances.

Held: (1) the principles of natural justice must be observed in exercising a power of expulsion or suspension unless it plainly appears on a true construction of the Club rules that the power was intended to be absolute and unfettered either by express exclusion of these principles or by necessary implication. It is a fair and reasonable expectation of any member that he would not be subjected to disciplinary proceedings and punished without the principles of natural justice being applied in the proceedings;

(2) the jurisdiction of the court to determine questions of law cannot be ousted by any club rules. The duty on the part of the committee to observe the principles of natural justice in exercising its powers under rule 5(i) must be implied and given effect;

(3) there was a real likelihood of bias on the part of a member of the committee concerned, namely, Mr. Stone because of his close relationship with Madam Teoh;

(4) the failure to give sufficient particulars in the agenda for the discussion of the plaintiffs's conduct rendered the unanimous decision of the committee invalid;

(5) in the circumstances, the decision to suspend the plaintiff was null and void and of no effect. For the embarrassment, distress and humiliation suffered by the plaintiff, she was awarded $10,000.00 for damages and costs.

Per Curiam: The tendency on the part of the courts these days is to expand the scope of natural justice rather than constrict it.

Cases referred to:

(1) *Ridge* v. *Baldwin* [1964] A.C. 40, 132.
(2) *John* v. *Rees & Ors.* [1969] 2 All E.R. 274, 307.
(3) *Young* v. *Ladies' Imperial Club Ltd.* [1920] 2 K.B. 523.
(4) *R.* v. *University of Cambridge* (1723) 1 Stra. 557, 567; 93 E.R.K.B. 698, 704.
(5) *Bonsor* v. *Musicians' Union* [1955] 3 All E.R. 518.

CIVIL SUIT.

R.J. Manecksha for the plaintiff.

Teoh Ah Joo for the defendant.

Cur. Adv. Vult

Ajaib Singh J. : Mrs. Florence Bailes the plaintiff in this case sued Dr. Ng Jit Leong the president of the Penang Club on his own behalf and on behalf of all other members of his committee for a declaration that the decision made by the committee on May 22, 1981 suspending the plaintiff from the club premises and all facilities accruing thereto for a period of three months was null and void. She also claimed an injunction to restrain the committee from enforcing the said suspension as well as damages and costs. During the hearing of the suit however the plaintiff did not pursue her claim for the injunction as the three months' suspension had long passed and any decision thereon would serve no purpose. The plaintiff filed her writ on June 4, 1981 when Dr. Ng Jit Leong and his committee were managing the Penang Club.

The plaintiff was at the material time a lady associate of the Penang Club by virtue of being the wife of an ordinary member as defined and provided for in the rules of the club. As a lady associate she was required to pay a monthly subscription of $2 under rule 17 of the club rules and this sum was debited in her husband's monthly statement of account in accordance with club practice.

On May 9, 1981 at about 8.00 p.m. an incident took place in the games room of the club. It was alleged by another lady associate Madam Teoh Siew Heok that the plaintiff had made derogatory remarks about her in the presence and hearing of several other persons who were present in the games room. Madam Teoh reported this incident to the club president and also sent a letter to him setting out the details of the remarks which she alleged the plaintiff had made in the games room. Madam Teoh does not read or write English and she had the letter written by Mr. Jeffrey Stone with whom she was then living. Mr. Jeffrey Stone incidentally was also at the relevant time a member of the club committee.

Mr. Charles Ong a committee member and disciplinary convenor of the Penang Club investigated the complaint. In his evidence he said that he went through the rules of the club to look into the procedure which he should adopt. He found that there were two rules which might be material to the case – rule 51(i) and rule 63. These rules read as follows –

> "51(i) The Committee may at any time without assigning any reason withdraw all privileges granted to visiting, honorary, subscribing members and Lady Associates.
>
> 63 If any member shall misconduct himself either in or out of the Club and after enquiry and opportunity for explanation given in the opinion of the Committee such misconduct is injurious to the character and interest of the Club or if any member be guilty of any breach of the Rules and Bye-laws of the Club, the Committee shall have power to suspend such member for any period not exceeding three months. Any member so suspended shall have the right of appeal to a special general meeting and he may request the Committee to call one for such purpose and the provisions of Rule 64 shall apply as to the constitution of the meeting."

Membership of the club is stated in Rule 2 as consisting of "Ordinary Members, Associate Members, Honorary Members and Visiting Members."

Mr. Charles Ong is an advocate and solicitor by profession and after having done some research he formed the opinion that Mrs. Florence Bailes was not a member within the club rules and therefore rule 63 was not applicable to her. He thought that rule 51(i) was the appropriate rule to apply in this case. He then questioned and took statements from the people who were in the games room when the remarks were alleged to have been made by the plaintiff. Of all these several people only Peter Wong Cheong Kong was of any help and he confirmed that the plaintiff did in fact make the derogatory remarks about Madam Teoh on the night of May 9, 1981 in the games room.

Mr. Charles Ong did not however question Mrs. Bailes nor did he take any statement from her. He explains this in his evidence by saying that under rule 51(i) she need not be heard, that there was no

necessity to question her and that the committee was entitled to take action against her without hearing her in defence. Neither did any of the other committee members speak to Mrs. Bailes about the allegation made against her by Madam Teoh.

Informal discussions appear to have taken place among some of the committee members and finally in the committee meeting held on May 11, 1981 it was unanimously decided that the plaintiff should be suspended for three months. The relevant extract from the minutes of the committee meeting held on May 22, 1981 is as follows –

"Complaint by Miss Teoh Siew Heok against Mrs. Florence Bailes to the effect that in the machine room Mrs. Bailes remarked in Hokkien that if she does not stop operating the machine she can go back to the Latin Quarter and open her legs. This was confirmed by Mr. Wong Cheong Kong who was a member of the Club present at that time amongst others, namely, Miss Ooi Juat Lee, machine attendant, Madam Wong Fong Yin, a lady associate member; letter of suspension for 3 months under rule 51(i) to be prepared by Mr. Charles Ong and sent."

The letter of suspension dated May 23, 1981 and signed by the club president was duly sent to the plaintiff. It reads as follows –

"Pursuant to the powers conferred on the Committee by Rule 51(i) of the Rules of the Club please be informed that the Committee hereby suspends you from the Club premises and all facilities accruing thereto for a period of three months from date of receipt hereof."

The members of the committee who were present on May 22, 1981 appear to have been strongly swayed by the views of Mr. Charles Ong on rule 51(i) and rule 63 in relation to the position of Mrs. Bailes as a lady associate. His opinion on the construction of the club rules and his views thereon were readily accepted by the committee members who were present at the meeting. Rule 63 was out he says – it did not apply to the plaintiff because in his opinion she was not a member within the club rules. Rule 51(i) would apply and he told the committee members that in applying this rule the principles of natural justice were not applicable and therefore the plaintiff was not entitled to be heard. He formed the opinion that the plaintiff was a mere appendix of her husband who was a member.

The decision taken by the committee was unanimous and the seven committee members who attended the meeting were of the view that they had absolute power under rule 51(i) to suspend the plaintiff without assigning any reason and without holding any inquiry. Consequently they decided that the principles of natural justice did not apply in this case and that they were not obliged to notify the plaintiff of the allegation made against her or to hear her in defence. They were also of the view that rule 63 applied only to ordinary members and not to lady associates.

After giving due consideration to the evidence adduced by the parties in this case and the submissions advanced by their counsel I have come to the conclusion that the plaintiff must succeed in this case.

The Penang Club is an unincorporated members' club and as such it is perfectly entitled to make rules and regulations for the proper conduct of its members and the club's management as a social club. It is not the concern of the court to adjudicate on domestic matters of a social club. These matters are left entirely to the members so long as the managing committee of the club conforms strictly to the rules. Thus a club member may be expelled or suspended for misconduct if the rules of the club so provide and the court will not intervene if the rules of the club have been strictly followed.

On the other hand the court will intervene if the club rules have not been strictly followed in expelling or suspending a member. In such a case the court is not only not incompetent to intervene but is the only forum to whom an aggrieved member may look to for redress which the court may grant in the exercise of its supervisory jurisdiction over members' clubs to see that they conform to their constitution. For otherwise there may be a real risk that members may be exposed to the whims and fancies and likes and dislikes of committee members leaving club members with legitimate grievances without any remedy.

The principles of natural justice must be observed in exercising a power of expulsion or suspension unless it plainly appears on a true construction of the rules that the power was intended to be absolute and unfettered either by express exclusion of the principles of natural justice or by necessary implication. The very minimum requirements of natural justice are that the committee of a club deciding the expulsion or suspension of a member for misconduct must be totally unbiased, that the member must be informed of his alleged wrong and that he must be given an opportunity to be heard in defence. In the case of *Ridge* v.

Baldwin[1] Lord Hodson had this to say on the basic requirements of the principles of natural justice –

No one, I think, disputes that three features of natural justice stand out – (1) the right to be heard by an unbiased tribunal; (2) the right to have notice of charges of misconduct; (3) the right to be heard in answer to those charges.

The case of *Ridge* v. *Baldwin (supra)* was referred to in *John* v. *Rees & Ors.*[2] where Megarry J. after stating Lord Hodson's view on the principles of natural justice said –

"I do not think that I shall go far wrong if I regard these three features as constituting in all ordinary circumstances an irreducible minimum of the requirements of natural justice. I need only add that all these requirements are essentially procedural in nature; I regard natural justice as a distillate of due process of law."

The court will imply a duty on the part of a club committee to observe the principles of natural justice in any proceeding which it may initiate to suspend or expel a member under the rules of the club. It is a fair and reasonable expectation of any member that he would not be subjected to disciplinary proceedings and punished without the principles of natural justice being applied in the proceedings. A member has a special relationship of a contractual nature with all other club members and he cannot be deprived of his rights and privileges in the club without due and proper inquiry. On this point Megarry J. in the case of *John* v. *Rees* (page 307) said –

"It is trite law that the rules of an unincorporated association form a contract between all the members of that association. It is, indeed, a somewhat special form of contract; but subject to that, what I am required to do is to construe the terms of a contract. Where the terms in issue deal with the exercise of a power of peremptory suspension or termination of the rights of one of the parties to such a contract, then I think that the common expectation of mankind would be that the power would be exercised only in accordance with the principles of natural justice unless the contrary is made plain.

Even if the law permits the principles of natural justice to be effectually excluded by suitable drafting, I would not readily construe the rules as having achieved this result unless they left me in no doubt that this was the plain and manifest intention. Put a little differently, I would say that if there is any doubt the applicability of the principles of natural justice will be given the benefit of that doubt. The cry 'That isn't fair' is to be found from the earliest days, in nursery, street and school alike; and those who wish to confer on the committee or other governing body of a club or association a power to act unfairly or arbitrarily in derogation of a common and universal expectation must make it plain beyond a peradventure that this has been done."

It is for the court to decide whether or not on its true construction a particular rule of a club gives the committee absolute powers of suspending or expelling a member without observing the principles of natural justice. The jurisdiction of the court to determine questions of law cannot be ousted by any club rule such as is found in rule 74 of the rules of the Penang Club which states that –

"The Committee shall be the sole authority for the interpretation of these Rules and the Bye-laws and Regulations, made thereunder and their decision upon any question or interpretation relative thereto shall be final and binding on the members."

In matters of law the court is the sole arbiter.

If there is an absolute and unfettered power vested in the committee rendering the principles of natural justice inapplicable by express exclusion thereof in the rules then the court will not invoke the principles of natural justice. It would however be a rather extreme case if any social club were to incorporate such absolute powers in their rules excluding the principles of natural justice in dealing with the expulsion or suspension of a member. In such a situation the courts may well consider further whether the enacting of such arbitrary and absolute powers in club rules does not conflict with public policy rendering the rules invalid. The tendency on the part of the courts these days is to expand the scope of natural justice rather that constrict it.

The rules of a club constitute a contract between the members. The power to expel or suspend a member must be exercised in good faith and for the good of the club and not from any indirect or improper motive and the committee must act without any bias or prejudice. The club committee is thus in a quasi-judicial position and it must give notice to the member whose conduct is impugned informing him of the wrong he is alleged to have committed and an opportunity given to him to be heard in defence. The committee cannot act on the evidence of one party only without hearing the other party.

To quote Megarry J. again (*John* v. *Rees* – page 309):

"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. "When something is obvious," they may

say, "why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start." Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable changes which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that by discussion, suffered a change. Nor are those with any knowledge of human nature who pause to think for a moment likely to underestimate the feelings of resentment of those who find that a decision against them has been made without their being afforded any opportunity to influence the course of events."

Rule 51(i) of the rules of the Penang Club empowers the committee at any time and without assigning any reason to withdraw all privileges of the club granted to a lady associate but upon a true construction of this rule it cannot be said that the power is unfettered and absolute so as to render the principles of natural justice inapplicable. The wording of rule 51(i) does not show a plain and manifest intention of excluding the principles of natural justice. The duty on the part of the committee therefore to observe the principles of natural justice in exercising its powers under rule 51(i) must be implied and given effect.

In the case of *John* v. *Rees* (*supra*) Megarry J. had to construe the provisions of clause 8(2)(b) of the constitution of the Labour Party which provided that –

"The duties and powers of the National Executive Committee shall include the following:-. .. (b) To enforce the Constitution, Standing Orders, and Rules of the Party and to take any action it deems necessary for such purpose, whether by way of disaffiliation of an organisation or expulsion of an individual, or otherwise. Any such action shall be reported to the next Annual Conference of the Party."

In holding that resolution passed by the National Executive Committee of the Labour Party suspending the activities of the Pembrokeshire Divisional Labour Party and depriving its officers from handling party funds a nullity Megarry J. said at page 308 –

"Before resorting to public policy, let the rules of the club or other body be construed: and in the process of construction, the court will be slow to conclude that natural justice has been excluded. Only if the rules make it plain that natural justice was intended to be disregarded will it be necessary for the courts to resolve the issue of public policy. In this case, accordingly, I approach both cl. 8(2) of the Labour Party constitution and the resolution of the N.E.C. dated April 24, 1968 as provisions requiring to be construed strictly, and as not excluding the processes of natural justice except insofar as this is made plain. Nothing that I can see in cl. 8(2) even begins to exclude the process of natural justice. The phrase "to take any action it deems necessary" cannot, in my judgment, be read as if it continued "however contrary to natural justice it may be"; nor, in my judgment, are the words "disaffiliation", "expulsion" or even "or otherwise" to be qualified in any such way. These things may be done but they must be done fairly and justly and not unfairly or unjustly. Accordingly, the first resolution, suspending the activities of the Pembroke Constituency Labour Party and depriving the officers of the right for the time being to handle the funds of the party, falls to be tested by the standard of whether it was made in accordance with the rules of natural justice. Whatever may be said about the right to an unbiased tribunal, the process of giving notice of the charges and giving those concerned the right to be heard in answer to the charges was plainly not followed. Accordingly, in my judgment the resolution was a nullity. It was effective neither to suspend the activities of the Pembroke Constituency Labour Party nor to deprive the officers of that party of their right to handle the funds."

In the present case the committee of the Penang Club was not obliged to give any reason for deciding to withdraw the privileges of the club from the plaintiff but before arriving at its decision the committee had to conduct a proper inquiry and to observe the principles of natural justice. There is nothing in rule 51(i) to "make it plain beyond a peradventure" that the committee was conferred with "a power to act unfairly or arbitrarily in derogation of a common and universal expectation" (*John* v. *Rees*). Mrs. Bailes ought to have been notified of the charge against her and given a chance to explain herself in defence.

Mrs. Bailes was not a mere nobody. She was a lady associate by virtue of her husband's membership and under the rules she had to pay a subscription of $2 a month although this sum was debited to her husband's monthly statement of account. There was thus a contractual relationship between her and the other members of the club as embodied in the club rules and this relationship could not be broken without cause and without proper inquiry. She had the right to know what was going on.

Apart from having the benefit of contract Mrs. Bailes also had benefit of social rights and privileges in the club. The suspension therefore not only affected her reputation as a lady associate but also deprived her of the privileges of the club conferred on her under rule 32(e) which reads as follows –

32(e) All Lady Associates shall subject to Rule 73 be entitled to the privileges of the Club and in all

other respects shall be liable to the obligations, restrictions and penalties in force for the time being.

Rule 73 refers to voting rights and to the sharing of the club property upon its dissolution to be claimed only by the ordinary members of the club.

In my judgment rule 51(i) is not absolute and unfettered so as to exclude the observance of the principles of natural justice. I am also of the considered opinion that the applicability of rule 63 is not confined to ordinary members but is applicable to lady associates as well. The word "member" in rule 63 is not restricted to ordinary members as contended by the defence. It is a word of general application and it embraces any member by whatever name he may be designated and who has a contractual relationship with the other members through the rules of the club. This includes lady associates even though they are not mentioned in the definition of membership in rule 2 of the club rules.

My views on rule 51(i) and rule 63 relate to the position of lady associates of the Penang Club. There are two categories of lady associates. One category is that of unattached ladies who are subject to the same rules governing the election of ordinary members. They pay an entrance fee and a monthly subscription of $20. The second category consists of the ladies of the family of ordinary and other members as provided for in the rules. These ladies do not pay any entrance fee but they pay a monthly subscription of $2. Lady associates of both categories have therefore a contractual relationship with all other members and under rule 32(e) they are entitled to the privileges of the club and liable to obligations. Mrs. Bailes was a lady associate under the second category by virtue of being the wife of an ordinary member while Madam Teoh Siew Heok came under the first category of lady associates as an unattached lady.

Some two years after the event rule 51(i) and rule 63 were amended and they now read as follows –

51(i) The Committee may at any time without calling for any explanation or assigning any reason thereof withdraw any or all privileges granted by these Rules or by the Committee to any category of members not covered by Rule 63 whether permanently or for a period of time in the absolute discretion of the Committee and no such member shall be eligible again to use the Club in any capacity during the period of withdrawal of the privileges.

63 If any ordinary member or a nominee of a Corporate Member shall misconduct himself either in or out of the Club building or premises or if any such member is alleged to have breached any of the Rules and Bye-laws of the Club and after due enquiry and opportunity for explanation given the Committee is of the opinion that such misconduct or such breach is injurious to the character and interest of the Club, the Committee shall have power to suspend such member for any period not exceeding three months and during the period of suspension he shall not be eligible again to use the Club in any capacity.

The amendments in the above two rules are not altogether insignificant. Regrettably however second thoughts came a little too late to save the day.

It cannot also be said that the committee was not biased and not prejudiced when it decided to suspend Mrs. Bailes. The committee in fact was highly prejudiced because the committee members who met on May 22, 1981 had the written complaint before them together with the so-called corroborative evidence of Peter Wong but not a single word from Mrs. Bailes who was in the dock. The scales weighed heavily against Mrs. Bailes.

As far as bias on the part of the committee is concerned there was at least one committee member namely Mr. Jeffrey Stone who because of his close and intimate relationship with Madam Teoh Siew Heok could not really have been in a position to take part and deliberate on the issue with total detachment. Because of his personal relationship with Madam Teoh he had a direct interest in the matter being discussed by the committee and therefore there was a real likelihood of bias on his part. It is not known exactly how the discussions and deliberations went among the committee members at their meeting on May 22, 1981 before they arrived at their unanimous decision to suspend Mrs. Bailes but it cannot be ruled out that Mr. Jeffrey Stone would in all probability have taken a strong stand against Mrs. Bailes and in the process might have managed to persuade some of the others in the meeting to go along with him.

On the evidence before me I find that there was a real likelihood of bias on the part of Mr. Jeffrey Stone. It is not necessary to find evidence of actual bias. Indeed the trend on the question of personal bias is to extend the test of bias from a real likelihood of bias to that of a reasonable suspicion test. *Jain* on Principles of Administrative Law 3rd edition at page 207 has this to say on this point –

"Under the English law, the test of bias was whether there was a "real likelihood of bias" (as against the reasonable suspicion of bias – the former imposing a heavier burden of proof on the person making the allegation), and it was, until recently, for the court to decide by its own evaluation whether such a likelihood existed in the circumstances of the case. In *Metropolitan Properties Co* v. *Lannon* [1968] 1 W.L.R. 815 the test was given a somewhat broader content. It was held that whether there was a real "likelihood" of bias or not in a situation should be ascertained with reference to right minded persons; whether they considered that there was a "real likelihood" of bias. The question of bias is thus to be decided by the court not on the ground whether in the mind of the court there was a "real likelihood" of bias or not but by applying the yardstick as to what a reasonable man would think about the matter; whether he would suspect "bias" in the circumstances. Even when the court may feel that there was no real likelihood of bias in the circumstances of the case, the court may still quash a decision if right-minded people would suspect bias on the part of the adjudicator. The test as now formulated boils down to the "reasonable suspicion" text. As de Smith explains, "reasonable suspicion" test looks mainly to outward appearances; "real likelihood" text focusses on the court's own evaluation of the probabilities *de Smith*, Judicial Review of Administrative Action, 230 (1973). The question is not whether the adjudicator was in fact biased, but whether a reasonable man with no inside knowledge might well think that he might be biased. It may be that, in a majority of cases, the result may be the same whichever formulation is applied, but at present the "reasonable suspicion" test appears to be in favour with the courts, and, in essence, the "suspicion" test seems to be somewhat broader than the "real likelihood" test."

Mr. Jeffrey Stone ought to have abstained from attending the meeting. By taking part in the meeting and joining in the unanimous decision to suspend Mrs. Bailes he contaminated the whole proceedings and brought the proceedings in direct conflict with one of the cardinal principles of natural justice.

There was yet another error in the proceedings of the committee meeting which in my view rendered the unanimous decision of the committee invalid. The agenda which also served as a notice of the meeting listed out a number of topics which were scheduled to be discussed on May 22, 1981. It was however not stated in the agenda that the conduct of Mrs. Bailes as contained in the allegation of Madam Teoh was to be discussed and possible action taken against her under rule 51(i). Madam Teoh's complaint came up for discussion under item 7(g) of the agenda which merely states "Discipline, Staff, Rules and Bye-laws."

The committee was in the process of taking drastic action against Mrs. Bailes. It was of the utmost importance that the agenda should have stated the object of the meeting insofar as Mrs. Bailes, position was concerned with sufficient particularity. The minutes of the meeting show that seven committee members were present including the president and Mr. Charles Ong. Seven others are stated to have been absent with apologies and one committee member is shown as being on leave. The committee member who did not attend the meeting were clearly deprived of their right to know exactly what was to be discussed at the meeting concerning Mrs. Bailes and deprived also of the right to express their views on the matter which may well have been favourable to Mrs. Bailes. The failure to give sufficient particulars in the agenda for the discussion of Mrs. Bailes' conduct rendered the unanimous decision of the committee invalid. (*Young* v. *Ladies' Imperial Club Ltd.*)[4]

In all the circumstances of this case one cannot but come to the irresistible conclusion that Mrs. Bailes had a very raw deal. A serious allegation was made against her by Madam Teoh Siew Heok at first orally followed by a letter to the club president. Mr. Charles Ong the disciplinary convenor of the club who investigated the complaint questioned several people who were in the games room that night and took statements from them. But Mr. Charles Ong was so obsessed with his own opinion on the interpretation of rule 51(i) and rule 63 that he never for a moment considered it necessary or important to tell Mrs. Bailes about the allegation which had been made against her and to ask for her side of the story. To Mr. Charles Ong, Mrs. Bailes was of no consequence for she was in his own words only a mere appendage of her husband and could be completely ignored – women's lib notwithstanding! And so Mrs. Bailes was kept blindfolded and her mouth gagged even as she was being prepared for the stake.

The committee considered the written complaint of Madam Teoh Siew Heok and the evidence of Mr. Peter Wong which was conveyed to the committee by Mr. Charles Ong. The committee accepted this one-sided story and suspended Mrs. Bailes for a period of three months. The conduct of the committee even with the best of intentions it might well have had in dealing with this matter fell far short of the concept of justice and fair play.

Even God himself did not punish Adam and Eve for having disobeyed his command by eating the forbidden fruit without first hearing them in defence. According to the Book of Genesis in the Old Testament God asked Adam and Eve whether they had "eaten of the tree whereof I commanded thee that thou shouldest not eat?" Adam in reply

blamed Eve for giving him the fruit to eat and Eve in turn said "The serpent beguiled me and I did eat". And it was only after hearing Adam and Eve in defence did God banish them from the Garden of Eden. (See *R.* v. *University of Cambridge*[4] wherein Fortescue J., in dealing with a case where a member of the University of Cambridge was deprived of his degrees without being given an opportunity to defend himself, referred to this account of Adam and Eve as narrated in the Bible. Megarry J. also cited this case in his judgment in *John* v. *Rees* (*supra*) at page 307).

In the circumstances therefore I declare that the decision of the committee of the Penang Club made on May 22, 1981 suspending Mrs. Bailes from the club premises and the facilities thereof for three months is null and void and of no effect.

On the question of damages I am of the view that Mrs. Bailes is entitled to damages for the wrong done to her. It is an actionable wrong occasioned by breach of contract. As a lady associate Mrs. Bailes was "entitled to the privileges of the club" and "liable to the obligations, restrictions and penalties in force for the time being" (rule 32e). In turn the Penang Club through its committee was impliedly bound not to suspend or expel Mrs. Bailes except as provided for and in accordance with the rules of the club. But the committee of the Penang Club did not follow the rules. It disregarded the provisions of rule 63 and acted under rule 51(i) without observing the principles of natural justice.

There is nothing in law to preclude the awarding of damages for wrongful suspension or expulsion from a members' club. Support of this is to be found in the judgments of Lord MacDermott and Lord Somerville in *Bonsor* v. *Musicians' Union*[5]. See footnote 2 para 242 of *Halsbury's* Laws of England 4th edition volume 6:

> "*Chamberlain* v. *Boyd* (1883) 11 QBD 407 at 415, CA, per Bowen LJ ("possibly the membership of a club may be a matter of temporal advantage, and the deprivation of it may be an injury or damage of which the law will take cognisance"). The grounds on which Lord MacDermott and Lord Somerville concurred in the decision of *Bonsor* v. *Musicians' Union* [1956] AC 104, [1955] 3 All ER 518, HL, support the view that an action for damages will lie in respect of wrongful expulsion from a members' club."

The editorial note in the report of the case of *Bonsor* v. *Musicians' Union* (*supra*) states that –

> "The principle that a member of an unincorporated association, when wrongfully expelled from that association, can bring an action for breach of damages against other members of the association where the wrongful expulsion amounts to a breach of contract with them, which is the ground on which Lord MacDermott and Lord Somervell of Harrow concurred in overruling the decision in *Kelly* v. *Assistants*, cited above, seems to be equally applicable to expulsion from unincorporated associations other than trade unions, e.g., an unincorporated members' club."

Mrs. Bailes has been a lady associate for about 14 years. Before her suspension she went to the club almost every day and her social life revolved around the club. She is still a lady associate but she said in evidence in court that after her suspension she did not go back to the club because she felt embarrassed, anguished and upset. She now goes to other clubs. She also said that she left for Europe soon after the suspension as there was nothing for her here and her telephone kept on ringing from her friends who wanted to know why and what happened to her at the club.

For the embarrassment, distress and humiliation which Mrs. Bailes has suffered as a result of the wrongful suspension I award her damages in the sum of $10,000 and costs.

Claim allowed.

Solicitors: *Lim Kean Siew & Co.; Presgrave & Matthews.*

PUBLIC PROSECUTOR v. TAHIR BIN KASSIM

[O.Cr.J. (Mohamed Dzaiddin J.) July 17 to 20, 24 & 27, 1984]
[Penang - Criminal Trial No. 30 of 1982]

Criminal Law & Procedure – Trafficking in 840.8 gms heroin – Possession – Presumption – Case against accused – Defence of no knowledge – Whether defence story reasonably true or casting any doubts on prosecution case – Sentence of life imprisonment or death – Whether circumstances extenuating – Dangerous Drugs Act, 1952, ss. 37(d), (da), (h), (g), 39B(1)(a), & 39(B)(2).

The accused was charged in the Penang High Court with trafficking in 840.8 gms of heroin on July 28, 1982 in contravention of s. 39B(1)(a) and punishable under s. 39B(2) of the Dangerous Drugs Act 1952.

Following receipt of information, the Penang police learned that the accused had 5 lb. of heroin for sale at the price of $16,000 per lb. PW1 agreed to set a trap on July 28, 1982 whereby PW1 and an informer were to meet the accused at Bayview Hotel that afternoon. PW2 would ne-